

MISSOURI COURT OF APPEALS WESTERN DISTRICT

MICHAEL CASH,

Appellant,

v.

MISSOURI DEPARTMENT OF REVENUE; SCOTT LEARY, Administrator,
Respondent.

DOCKET NUMBER WD77199

Date: May 12, 2015

Appeal from:
Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:
Division Four, Alok Ahuja, C.J., James E. Welsh, J. and Patrick W. Campbell, Sp. J.

Attorneys:
Philip O. Willoughby, Jr., Kansas City, MO, for appellant
Yamini Laks and Dale W. Miller, Jefferson City, MO for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

MICHAEL CASH

Appellant,

v.

MISSOURI DEPARTMENT OF REVENUE; SCOTT LEARY, Administrator,
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WD77199

Cole County

Appellant Michael Cash was employed as a tax auditor with the Department of Revenue. Beginning in March 2010, Cash was conducting an on-site audit at UMB Bank's Kansas City offices. UMB provided Cash with access to a secure room in which he could review confidential UMB documents. A UMB employee orally advised Cash that he should flag any documents he wished to have copied, and UMB would copy the documents for him.

The room in which Cash was working at UMB contained an operable fax machine. Cash attempted to fax a UMB document to himself at the DOR's offices, but aborted the fax transmission before it went through. UMB discovered the attempted fax transmission, terminated Cash's on-site audit work, and complained to his supervisors, contending that his attempt to fax a UMB document violated UMB's document-handling instructions.

The DOR terminated Cash on the basis that, by attempting to fax the UMB document to himself, Cash "failed to comply with basic audit performance expectations and with the express instructions of the taxpayer."

Cash appealed his termination to the Administrative Hearing Commission, contending that his termination was "not for the good of the service." After conducting an evidentiary hearing, the Commission agreed with Cash, and ordered his reinstatement. The Department appealed the AHC's Decision to the Cole County Circuit Court. The circuit court reversed, finding that the AHC's decision was "arbitrary, unlawful, unreasonable and [was] not supported by substantial and competent evidence on the record as a whole." This appeal follows.

**CIRCUIT COURT DECISION REVERSED; ADMINISTRATIVE HEARING
COMMISSION DECISION AFFIRMED.**

Division Four holds:

The Department's first two Points challenge the AHC's conclusion that, although Cash was a non-merit employee, he had a substantive right to his job, and therefore that the Department bore the burden to prove that Cash's dismissal was "for the good of the service." It is unnecessary for us to address these issues, however, because the AHC's Decision did not depend on its allocation of the burden of proof. Instead, the Commission affirmatively determined that Cash had not committed personal misconduct, and that his termination was "not for the good of the service."

The Department also argues that the Commission's decision that Cash's termination was not for the good of the service was unsupported by competent and substantial evidence. Based on the testimony the Commission found credible, however, substantial and competent evidence supports its conclusion that Cash did not violate any UMB directive or Department policy when he attempted to fax a UMB document to himself at DOR's offices.

Before: Division Four, Alok Ahuja, C.J., James E. Welsh, J. and Patrick W. Campbell, Sp. J.

Opinion by: Alok Ahuja, Judge

May 12, 2015

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